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Senate

CLASS ACTION FAIRNESS ACT OF 2005

Mr. CARPER. Mr. President, I thank Senator Specter for yielding to me. I say to my friend and colleague from Arkansas, he knows how fond I am of him and how highly I regard him, both in his previous role as attorney general and as a colleague in the Senate.

When I heard of the amendment he was preparing to offer, I stopped and I said to my staff, let's find out if this is something I can support. As many of my colleagues know, we have endeavored to improve this bill over time, and the legislation before us today is a far different bill than was first proposed 7 years ago or even was debated 2 years ago and reported out of committee.

Senator Specter has spoken of the option that is available to most attorneys general, an approach called *parens patriae*, which I understand means "government stands in the place of the citizen." For most attorneys general who wish to file a case on behalf of their citizens against some defendant, they have the opportunity to use *parens patriae*. For those who do not, in my judgment, they still have the opportunity to use the class action lawsuit.

What we have sought to do over the last couple of years in modifying this bill is to make sure that the class action lawsuits brought by an individual in a State, if they are of a national scope, they would be in a Federal court. If they are not, if they are

more of a local issue involving residents of that State, a defendant in that State, or even where there are multiple defendants, but a defendant in that State who has a principal role as a defendant, not just somebody who was sort of pulled out of the air, to make sure there is a real defendant with a real stake in it that has a real financial ability to pay damages, then the legislation that is before us actually permits an attorney general or, frankly, any attorney, plaintiff's attorney, to bring that kind of class action.

The legislation that is before us says if two-thirds of the plaintiffs in a class action lawsuit are from the same State as the defendant, it will stay in the State court, no question. The legislation before us says that if anywhere from one-third to two-thirds of the plaintiffs on whose behalf the class action is brought meet certain standards that are set out in the bill, that can stay in State court as well.

The legislation that is before us today provides exemptions as well for incidents involving a sudden single accident. The legislation before us today also provides exemptions under the Dodd-Schumer-Landrieu language that provide even further opportunities to proceed with a class action lawsuit if the matter that is being discussed is truly a local matter, if most of the people involved both as plaintiffs and defendants are within that State.

The last thing I would say is there are plenty of people on both sides of the aisle who would like to offer amendments. My fear is if any of those amendments were adopted, we invite the House of Representatives to come back and to offer quite a different bill than the compromise that is before us today. To those of us who seek reasonable, modest reforms—and this is a court reform bill, not a tort reform bill—but to those who seek moderate reforms incorporated in this legislation, I did not support this amendment because I think it would simply invite the adoption of other amendments and, frankly, put us in the situation which will end in a conference with the House of Representatives with a bill that is frankly far different than this one and will provide an end product not to my liking and I suspect even less to the liking of those who are opposed to this compromise.

I reluctantly oppose this amendment with that in mind, but it is not something I do easily or lightly.

I thank my friend Senator Cornyn for making it possible for me to have this time.